

1 Stephen F. Rohde, State Bar # 51446
2 steve@rohde-victoroff.com
3 ROHDE & VICTOROFF
4 1880 Century Park East, Suite 411
5 Los Angeles, California 90067-2561
6 Telephone: (310) 277-1482
7 Facsimile: (310) 277-1485

8 Attorneys for Defendant Lynne Spears

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 27 2012

John A. Clarke, Executive Officer/Clerk
BY Raul Sanchez Deputy

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 SAM LUTFI,

13 Plaintiff,

14 vs.

15 LYNNE IRENE SPEARS, JAMES
16 PARNELL SPEARS, BRITNEY JEAN
17 SPEARS, and DOES 1 through 25,
18 inclusive.

19 Defendants.

CASE NO.: BC406904

Lynne Spears' Motion in Limine #2

**DEFENDANT LYNNE SPEARS'
NOTICE OF MOTION & MOTION
IN LIMINE # 2 TO PRECLUDE &
EXCLUDE EVIDENCE AND
TESTIMONY OF ALLEGED
DEFAMATORY STATEMENTS
EXCEPT THOSE IDENTIFIED IN
PLAINTIFF'S FIRST AMENDED
COMPLAINT ; SUPPORTING
MEMORANDUM AND
DECLARATION OF STEPHEN F.
ROHDE**

[Proposed] Order lodged concurrently
herewith

Motion Hearing Date: 10/2/2012
Motion Hearing Time: 10:00 a.m.
Motion Hearing Place: Dept. 71

Action Commenced: 2/3/2009
Final Status Conference: 9/25/2012
Jury Trial Date: 10/1/2012

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5. "Adnan told me that Sam hid Britney's cell phones and told her that he lost them."

1 6. "Adnan told me that Sam also would hide Britney's dog, London. She would
2 look all over the house, crying, and then Sam would bring out the dog and act like
3 some sort of savior."

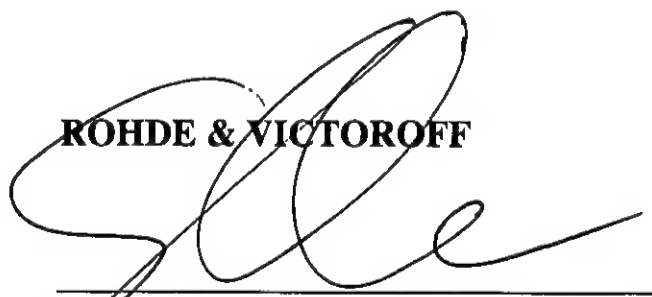
4 7. In addition, Mr Lutfi alleges that the following words referred to him as
5 published in Lynne Spears book : "fake," "Svengali," "a predator," "a gatekeeper,"
6 and "the General" and that he used paparazzi as his "foot soldiers" and "henchman."

7
8 Prior to filing this Motion, as soon as counsel for Lynne learned on September
9 24, 2012 that Plaintiff intended to vastly expand the scope of the **Previously**
10 **Identified Alleged Defamatory Statements** to encompass **Thirty-Four (34) Alleged**
11 **Defamatory Statements**, the next day on September 25, 2012, he immediately
12 initiated a Meet & Confer process as set forth in the accompanying Declaration of
13 Stephen F. Rohde, Esq., However, to date Plaintiff's counsel has never responded.

14 This Motion is based on the attached Memorandum of Points & Authorities, the
15 attached Declaration of Stephen F. Rohde, Esq, the pleadings and papers on file in this
16 action, and upon such argument and evidence as may be presented prior to or at the
17 hearing of this matter.

18 Dated: September 27, 2012

ROHDE & VICTOROFF



STEPHEN F. ROHDE
Attorneys for Defendant LYNNE
SPEARS

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1 The allegations of the First and Second Causes of Action are incorporated in the
2 Fourth Cause of Action, which contains no additional factual allegations.

3 The foregoing 7 items are referred to herein as the **Previously Identified**
4 **Alleged Defamatory Statements**. Throughout the 3 ½ years of this litigation,
5 including all motion practice, an anti-SLAPP Motion, an appeal to the Court of
6 Appeal on the anti-SLAPP motion, all discovery, including an extensive deposition of
7 Lutfi, and Plaintiff's draft Jury Instructions submitted in December, 2011 in advance
8 of the initial Trial date last January, the only libelous or defamatory statements alleges
9 by Plaintiff were the **Previously Identified Alleged Defamatory Statements** listed
10 above.

11 However, only three days ago, on September 24, 2012, on the eve of trial, for
12 the first time, Plaintiff look Lynne and her counsel completely by surprise by listing in
13 Plaintiff's [Proposed] Jury Instructions, a total of **Thirty-Four (34) Alleged**
14 **Defamatory Statements**. The very next day, Lynne's counsel sent Plaintiff's counsel
15 an email pointing that "[c]ontrary to the First Amended Complaint" and "the Jury
16 Instructions you previously circulated" the "Proposed Jury Instructions I received
17 yesterday list an astounding 34 statements which you purport to assert as the basis for
18 your claims against [Lynne]. ... Please consider this a Meet & Confer request to
19 explain in every respect why you believe on the eve of trial you are entitled to spring a
20 surprise like this and vastly expand the scope of your case beyond the FAC and your
21 prior disclosures."

22 To date, Plaintiff's counsel has failed to respond and has failed to provide ANY
23 legal basis for expanding this case to include **Thirty-Four (34) Alleged Defamatory**
24 **Statements.**

25 Under California law, "the words constituting an alleged libel must be
26 specifically identified, if not pleaded verbatim, in the complaint." *Gilbert v. Sykes*,
27 147 Cal.App.4th 13, 34 (2007). Allegations which do not identify the substance of
28 what was said or written are insufficient. *See Silicon Knights, Inc. v. Crystal*

1 *Dynamics, Inc.*, 983 F.Supp. 1303, 1314 (N.D.Cal.199); *Jacobson v Schwarzenegger*,
2 357 F.Supp.2d 1198, 1216 (C.D.Cal.2004).

3 Unless this Motion in Limine No 2 is granted, Lynne's right to Due Process and
4 Fair Notice will be violated and she will be severely prejudiced by being denied the
5 right and opportunity prior to trial to challenge the **Thirty-Four (34) Alleged**
6 **Defamatory Statements**, by a Demurrer, an anti-SLAPP Motion, or a Motion for
7 Summary Adjudication, and to conduct discovery on the **Thirty-Four (34) Alleged**
8 **Defamatory Statements**.

9 Furthermore, since Plaintiff is a limited public figure, this case is subject to all
10 of the protections of the First Amendment, at the core of which is the fundamental
11 constitutional right to be on notice of each and every alleged defamatory statement
12 and to have a full and fair opportunity to prepare a complete defense to each and every
13 alleged defamatory statement. *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-6
14 (1964)

15 For each of these reasons, this Motion in Limine should be granted and the
16 Court should enter an Order prohibiting Plaintiff and Plaintiff's counsel from referring
17 to, questioning about, commenting upon, attempting to suggest or attempting to
18 introduce testimony or evidence concerning any alleged defamatory statements as a
19 basis for the First, Second and Fourth Causes of Action, except for the following:
20

21 1. "Sam told Jackie and me that he grinds up Britney's pills, which were on the
22 counter and included Risperdol and Seroquel, and puts them in her food. He said that
23 was the reason she had been quiet for the last three days. She had been drugged and
24 asleep. He said that her doctor was trying to get her into a sleep-induced coma so that
25 they could then give her other drugs to treat her."

26 2. "The general told us that he threw away all of Britney's phone chargers and
27 disabled the house phones by cutting the wires."

28 3. "He also disabled several of Britney's cars so she couldn't leave unattended."

1 4. "He then told us to tell Britney that Adnan is gay."

2
3 5. "Adnan told me that Sam hid Britney's cell phones and told her that he lost
4 them."

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6 6. "Adnan told me that Sam also would hide Britney's dog, London. She would
7 look all over the house, crying, and then Sam would bring out the dog and act like
8 some sort of savior."

9 7. In addition, Mr Lutfi alleges that the following words referred to him as
10 published in Lynne Spears book : "fake," "Svengali," "a predator," "a gatekeeper,"
11 and "the General" and that he used paparazzi as his "foot soldiers" and "henchman."
12

13 Dated: September 27, 2012

ROHDE & VICTOROFF

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17 **STEPHEN F. ROHDE**
18 **Attorneys for Defendant LYNNE**
19 **SPEARS**
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09/27/12

1 **DECLARATION OF STEPHEN F. ROHDE**

2 I, Stephen F. Rohde, hereby declare that:

3 1. I am an attorney at law duly admitted to practice before this Court and
4 am a partner in the law firm of Rohde & Victoroff, attorneys of record for Defendant
5 Lynn Irene Spears ("Lynne"). I have personal knowledge of the following facts, and
6 could and would competently testify thereto if required to do so. I submit this
7 Declaration in support of the Lynne's Motion *in limine* # 2.

8 2. Prior to filing this Motion, as soon as I learned on September 24, 2012
9 that Plaintiff intended to vastly expand the scope of the **Previously Identified**
10 **Alleged Defamatory Statements** to encompass **Thirty-Four (34) Alleged**
11 **Defamatory Statements**, the next day on September 25, 2012, I immediately
12 initiated a Meet & Confer process by sending Joseph Schleimer, Esq, Plaintiff's
13 counsel, an email pointing that "[c]ontrary to the First Amended Complaint" and "the
14 Jury Instructions you previously circulated" the "Proposed Jury Instructions I received
15 yesterday list an astounding 34 statements which you purport to assert as the basis for
16 your claims against [Lynne]. ... Please consider this a Meet & Confer request to
17 explain in every respect why you believe on the eve of trial you are entitled to spring a
18 surprise like this and vastly expand the scope of your case beyond the FAC and your
19 prior disclosures." However, to date Plaintiff's counsel has never responded.

20 3. Plaintiff circulated draft Jury Instructions in December, 2011 in advance
21 of the initial Trial date last January, in which he listed only the **Previously Identified**
22 **Alleged Defamatory Statements**. He did NOT list **Thirty-Four (34) Alleged**
23 **Defamatory Statements**.

24 4. As counsel for Lynne, I have conducted my entire defense and my entire
25 trial preparation on the basis of the **Previously Identified Alleged Defamatory**
26 **Statements**, NOT the **Thirty-Four (34) Alleged Defamatory Statements**. It would
27 cause severe prejudice to my client if Plaintiff on the eve of Trial is allowed to
28 proceed on the basis of the **Thirty-Four (34) Alleged Defamatory Statements**,

1 instead of the **Previously Identified Alleged Defamatory Statements.**

2
3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct, and that this Declaration was executed this 27th day of
5 September, 2012, at Los Angeles, California.

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STEPHEN F. ROHDE

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1880 Century Park East, Suite 411, Los Angeles, California 90067. On September 27, 2012, I served the foregoing document(s) described as

DEFENDANT LYNNE SPEARS' NOTICE OF MOTION & MOTION IN LIMINE # 2 TO PRECLUDE & EXCLUDE EVIDENCE AND TESTIMONY OF ALLEGED DEFAMATORY STATEMENTS EXCEPT THOSE IDENTIFIED IN PLAINTIFF'S FIRST AMENDED COMPLAINT ; SUPPORTING MEMORANDUM AND DECLARATION OF STEPHEN F. ROHDE

on the interested parties in this action by placing true copies thereof in sealed envelopes addressed as follows:

Joel E. Boxer *
Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, PC.
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561

Leon J. Gladstone *
Michael J. Aiken
Gladstone Michel Weisberg Willner & Slaoane, ALC
4551 Glencoe Ave., Suite 300
Marina Del Rey, CA 90292

Joseph D. Schleimer * and **
9401 Wilshire Blvd., Suite 1250
Beverly Hills, CA 90212

** X BY U.S. MAIL: I deposited such envelope at a U.S. Mailbox at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

— BY PERSONAL SERVICE: I delivered such envelope by hand to the offices of the addressee.

*X BY ELECTRONIC MAIL; I personally sent the documents via Electronic Mail to the addressee(s) above.

— BY FED EX: I caused the document(s) to be deposit with Federal Express fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 27, 2012 at Los Angeles, California.


Stephen F. Rohde